

AWARD

In the Matter of:

Davenport Community School District  
Public Employer

and

Davenport Education Association  
Public Employee Organization

Micheal L. Thompson

Arbitrator

Appearances:

For the Employer:

James C. Hanks, Attorney  
Julio Almanza, Superintendent,  
Ethel Reynolds, Executive Director Administrative Services  
Bill Cirivello  
Marsha Finney  
Linda McClurg

For the Public Employee Organization:

Linda Schneider, UniServ Director  
Karen Kline-Jerome  
Dan Flaherty  
David Buller  
John Kealey

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RELATIONS BOARD

## STATEMENT OF JURISDICTION

The matter proceeds to an arbitration hearing pursuant to the statutory provisions established in the Public Employment Relations Act, Chapter 20, code of Iowa. The above named arbitrator was selected from a list furnished to the parties by the Public Employment Relations Board.

A hearing was held on May 8, 2007 at 10:00 am in Davenport, Iowa. The hearing was electronically recorded. At the hearing the parties (Davenport Community School District hereinafter Employer and Davenport Education Association hereinafter Association) were given the full opportunity to introduce evidence, facts, and arguments in support of their respective positions. Upon the basis of the evidence, facts, and arguments presents, the following awards were made.

## STATEMENT OF THE ISSUES

At the hearing, the **Association** reported the following issues:

Article V Hours -- Current contract

Article 13 1 -- Transfer Procedures -- Current Contract

Base: \$26,790 or \$625 increase

Supplementary:

Cross Country (Boys and Girls)	20%
Wrestling Varsity Head	25%
Asst Wrestling	12%
Sophomore Wrestling	12%
Baseball, Softball, Varsity Head	25%

At the hearing the **Employer** reported the following issues:

#### **Article V: Hours**

- 5.1 LENGTH OF DAY AND NON INSTRUCTION TIME -- The employees workday shall be **eight hours** with a duty-free lunch of a minimum of **30** minutes. exclusive of passing time.

#### **Transfer Procedures**

The board proposes that the current contract language be maintained except for the following:

##### 13.1 Voluntary Transfer Procedures

13.11 Definitions -- 13.174 All vacancies will be subject to the following procedures (delete the phrase being filled by seniority) as hereinafter provided, except ....

13.12 Each calendar year, the District may exempt from the voluntary transfer procedures of the agreement up to eight (8) vacancies for purposes of meeting the District's Affirmative Action Goals. . . . The Association shall be notified when a position is held for this purpose. Delete the following phrase: provided a list of such vacancies 10 work days prior to the bid meeting(s) provided by Section 13.152 of this agreement.

##### 13.15 Posting and Bidding Process....

13.151 Bidding shall be done electronically throughout the year. Vacancies shall be published electronically on Monday at 10AM and shall remain posted through Tuesday at 4PM. The phrase occurring "since the last vacancy ... to this contract." shall be deleted.

13.152 Delete the paragraph "A Bid meeting to fill such vacancies . . . Successful bidders shall assume their new positions at the commencement of next succeeding contract year."

Insert the following paragraph under 13.152

The principal and/or the interview team convened by the principal will interview and select the candidate by Friday at 4PM. If the principal and/or the candidates have good cause to be unavailable in person, that person may participate by conference call. One of the two most senior

bidders shall be selected by the District to fill the vacancy. The district shall provide a reasoned response to the unsuccessful bidder, but the decision shall not be subject of a grievance.

- 13.153 Delete the sentences that begin with "All bidding shall be done in person at the bid meeting, except in cases of emergency. A separate bid meeting will be held for nurses to fill vacancies.

Insert the following for 13.153

An employee who is a successful bidder shall remain in such position for the next two (2) succeeding school years, unless said employee is displaced as a result of staff reduction. Any such displaced employee shall retain all bidding rights provided by this contract. An employee who bids successfully on a position may subsequently bid on another position.

- 13.16 Returning from Leave of Absence -- delete the phrase "and bidding process of each school year"
- 13.17 Exceptions to the Bidding Process: Delete the sentence: The selection of the successful bidder shall be based upon the following criteria.
- 13.171 Disciplinary Probation or Tier III in the District ...
- 13.172 New Hires -- ...
- 13.173 Delete the article with the sentence "The senior bidder shall fill the vacancy
- 13.174 Delete the article with the sentence " For purposes of this article, employee shall refer to full-time and part-time employees.
- 13.18 Delete the sentence "If the teaching position is not filled by the June bid meeting, it will be bid at the June bid meeting"

#### **Wages -- Appendix A -- Salary Schedule**

The Board proposes that employees be permitted to advance on the schedule, that there be no change in the structure of the salary schedule, and that there be a \$575 increase in the base salary.

This represents a total package of 4.50%.

## **CRITERIA APPLIED IN MAKING RECOMMENDATIONS**

The Iowa Public Employment Relations Act contains criteria that are to be used by an arbitrator in judging the reasonableness of the parties' collective bargaining proposals. The Act establishes the criteria that are to be used by interest arbitrators in formulating their awards. Section 22 9 of the Act provides, in relevant part:

The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

- a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
- b. Comparison of wages, hours, and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved
- c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effects of such adjustments on the normal standard of service
- d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

With the criteria mandated for arbitrators firmly in mind and based upon the entire record developed at the hearing, the award contained in this report is formulated

## **Background**

Davenport Community School District is located in the southeastern part of the state, and it is located in an urban area with an enrollment of 16,492, which is the third largest in the state. However, the District has a declining base of students which has a commensurate loss in state revenues. The parties have engaged in collective bargaining since 1974 and have used impasse procedures over the thirty years of bargaining. While the bargaining relationship has been relatively free of acrimony, impasse procedures have been utilized. The current contract is for the year that begins July 1, 2007, and the parties have been unable to resolve the preceding issues. The Employer and Association have spent considerable time in bargaining and negotiations, including the intervention of a mediator to voluntarily resolve the issues. This effort was unsuccessful and the impasse proceeded to hearing.

The Employer and Union presented evidence and each asserted their respective positions. The impasse appears to have generated intense feelings for both groups. The subscribed arbitrator has reviewed and considered at length the arguments, records, and evidence presented and has carefully considered each point raised by the Employer and Association. This dispute centers around three issues – wages, hours and transfers. While they are separate issues, two (hours and wages) impact upon the monetary framework of the District while the transfer indirectly impacts economics. The combination of economic issues and transfers are equally important and this has created some acrimony as evidenced by the Association's perspective that these are "heart issues ". Given the intensity, each party was given ample time to present evidence and testimony regarding their respective position. At the end of the session

each party elected to not submit a closing brief

Given the history of negotiations, the parties have experience with comparability. The Employer and the Association use different comparability groups. The Employer's group is called the Urban Education Network and consists of the eight largest school districts (Des Moines, Cedar Rapids, Sioux City, Iowa City, Waterloo, Dubuque, Council Bluffs, and Davenport). In addition the District also supplemented its grouping with the twenty largest districts. Regardless of the comparability grouping, Davenport is the third largest district. The Association uses the largest eight districts which comprise the urban network and it also uses the Mississippi Area Conference (MAC) which are the large schools contiguous to the Mississippi River basin in southeastern Iowa.

Among the strategic factors for a neutral to consider in making a recommendation is the comparability group. The weight given by the arbitrator is a function of several factors, which include, but are not limited to: geographical proximity, size of population, demographic characteristics, and other relevant financial data. Therefore, it is not necessary to adopt in its entirety, either party's group as most appropriate. However, appropriate weight has been given to the common tier of comparable districts. Since the Employer's primary group is identical to the Union's group, the analysis will encompass all of the districts. The secondary groupings also include many common districts, and therefore the arbitrator will weight comparability on a limited basis.

### **Discussion, Finding of Fact, and Awards**

The first issue is hours. The Employer is seeking to change the workday from 7 hours and forty minutes with a 25 minutes duty free lunch to an 8-hour day with a 30

minutes duty free lunch. The employer's argument in extending the day is based upon its receipt of notification by the State Department of Education that it must implement a District Correction Action Plan as the district is in need of assistance related to the Federal No Child Left Behind Act. In addition the Employer argues that there is comparability for the change when one includes the work year at Davenport, which is less than others in the comp group. The Association asserts there is not comparability, and they argue that the hours provision has been negotiated from an 8-hour day to 7 hours and 40 minutes. Moreover the Association asserts that changing to an 8-hour day is tantamount to increasing the work time by 46 hours and 25 minutes a year which is a cost of \$1,302 per year per employee.

In reviewing the evidence, the Arbitrator finds that there is not comparability in any of the comp units offered by the Employer and Association to substantiate a change. Most schools in the groupings have slightly different work hours, but the District's evidence is not compelling as many are 7 hours and 40 minutes or less even in the employer grouping. Obviously this is the current language in the current Master contract between the parties. In addition the Association's assertion that this would mean an increase in work hours of 46 plus hours of work per year is compelling because it would mean that Association members would be earning less. When this is coupled with the fact that the Arbitrator would be changing the status quo, it is problematic, as it would mean that the Arbitrator would be substituting his decision for what has been negotiated by the parties which runs contrary to this arbitrator's approach. The assertion that this is needed to meet No Child Left Behind was important, but it was not sufficient to overturn comparability, past negotiations, and the monetary implications. The moving party, the



Employer, has the responsibility to demonstrate through a preponderance of evidence why a change is necessitated. In this case the Employer has not met the test, and the Arbitrator determines that the hours clause will remain as per the current contract -- 7 hours and 40 minutes.

The next issue is transfer procedures. Like the preceding issue, the Employer is seeking a change predicated upon the result of No Child Left Behind. The District argued that it needs a change in language such that the Employer can select from the two most senior employees as opposed to the current language, which extends the offer to the most senior bidder. In addition the Employer also changes the bidding process to electronic bidding and they assert that this change should not be grieved. The Employer's argument is that is a "modest change" that is necessary to meet the demands of No Child Left Behind, as the District is one of three Iowa districts to not meet the federal requirements. Superintendent Dr. Julio Almanza testified that the District is required by the Department of Education to take corrective actions or lose funding. Among these actions required is to replace District personnel relevant to the inability to meet the standards of No Child Left Behind. Dr. Almanza also testified that changing the transfer procedure would help the District to meet the federal guidelines.

The Association counters that the District has had the opportunity to negotiate this issue for a number of years, and that the contract reflects the will of the Association members over a number of years. Moreover, the Association noted that the bargaining history does not reflect a need for this change or that contract language has not changed over time. Like the previous language issue, the Association argues that the District has a responsibility to demonstrate a need for a change. In addition the Association notes that

the comparability is different -- the District includes bidding, electronic bidding, and grieving the decision -- which are not found in other contracts.

The District presented considerable evidence on this issue, which included testimony from the Superintendent and former Human Relations Director and current Executive Director of Administration (Ethel Reynolds), who noted that the Employer had tried to change this contract item numerous times but were unable to negotiate a change. Reynolds also noted that the current system minimizes flexibility on the building level, which is germane to the replacing the District personnel who are relevant to the inability of the district to meet the federal requirements. The District also includes an arbitration award that indicates why long-term language related to transfer should be changed to meet the needs of the District in hiring the "best qualified" candidate. Additional evidence was submitted re: comparability on this issue. Within the Urban Network/Eight Largest Districts, four of the Districts (Des Moines, Dubuque, Waterloo, and Sioux City) use seniority as a major factor in making transfer. Iowa City indicates that employees who apply will be given first consideration but do not have to be appointed to the position. Waterloo and Cedar Rapids specifically give the employee the right to grieve while Council Bluffs indicates that teachers will receive reasoning in writing. The other districts do not specifically articulate whether this can be grieved, although the Arbitrator assumes it can be grieved absent information to the contrary.

In reaching a decision on this issue, the Arbitrator finds that the Employer has the responsibility to demonstrate why the contract should be altered. The facts of the case indicates that the Employer faces administrative action by the Iowa Department of Education related to No Child Left Behind. The facts also specifically note that the

Employer has a responsibility to "Replace district personnel who are relevant to the inability of the district to make adequate progress." Comparability and bargaining history does not reach the level to signify that a change is mandated. In fact electronic bidding is not used in other districts. Thus the Arbitrator is forced to weigh the three variables within the context of Iowa Code -- past bargaining history, comparability, ability to pay, and other relevant issues. In this instance the Arbitrator finds that evidence is not sufficient to warrant a change in the language. The moving party, the District, indicates that negotiations have occurred regarding language changes, but the Association rebutted this with a detailed history of negotiating this issue. This summary of negotiations indicates that this item has been open for negotiations and that changes have occurred over time. The Arbitrator finds that the Association provided more compelling data regarding negotiation history and comparability, and the contract language will remain the same as the current contract.

The next issue is wages. The Employer argued that it has limited ability to pay, but it is clear that there is not an inability to pay. However, the employer argues that its offer is more appropriate given the comparability groups. The Employer indicates that the increase should include advancement on all lanes and a \$575 increase in the base. The District also argues that this increase is fair based upon the new money available (2.68%) which is the lowest in the Urban Network. When this is combined with the budgetary limitations and No Child Left Behind, the Employer asserts that its offer is most reasonable. Finally, the Employer recorded the average settlement trend for the total package in the Urban Network as 4.82% (ISEA records at 4.86%) based upon new money (average) of 3.91% which exceeds Davenport's new money of 2.68%.

The Association urges that the Arbitrator award a settlement of \$625 on the base as well as the aging of the schedule. Additionally, the Association seeks to increase supplementary pay for the following coaches -- cross country (boys/girls), varsity head wrestling, assistant wrestling, sophomore wrestling, and baseball/softball varsity head. The Association argues that these coaches do not fare well when compared with others in LARGE 8. Finally, the Association argues that there is not an inability to pay and that this is affordable.

Accordingly, the issue is what is a fair wage. In this instance the Association and Employer urge similar wage requests. While it is apparent that the coaches are behind those in other districts, it is also clear that the Employer is facing tough financial decisions, which could be exacerbated by No Child Left Behind. In this case the District presented evidence that was convincing to the Arbitrator -- the raise offered within the context of new money is most compelling. While the Association documents some degree of pay disparity, it is not sufficient to warrant the increase of \$625 on the base or the increase on supplemental. The Arbitrator awards the increase of \$575.

#### SUMMARY

Hours	Current Contract (Association Offer)
Transfer Procedures	Current Contract (Association Offer)
Wages	Base increase of \$575 (Employer Offer)

Dated and signed by:

5/10/07

Micheal L. Thompson, Arbitrator

M L Thompson

### **Certificate of Service**

I certify that on the 20th day of May, 2007 I served the foregoing Arbitrator Award upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

Linda Schneider, UniServ Director  
ISEA/grand River UniServ Unit  
2028 38th Street, Suite 2  
Davenport, Iowa 52807

James Hanks, Attorney  
100 Court Avenue  
Des Moines, Iowa 50309

I further certify that on the 20th day of May, 2007, I will submit this report for filing by mailing it to the Iowa Public Employment Relations Board, 510 East 12th Street, Suite 1B, Des Moines, Iowa 50309.